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SMART TECHNOLOGIES INC.

ORIGINAL FILED OCT 26 2011

E-filing

PJH

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THOMAS E. HARPER and DIANNE KEENE, Individually and On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

SMART TECHNOLOGIES INC., DAVID A. MARTIN, NANCY L. KNOWLTON, G.A. FITCH, SALIM NATHOO, ARVIND SODHANI, INTEL CORPORATION, APAX PARTNERS, MORGAN STANLEY & CO. INC., DEUTSCHE BANK AG, and RBC DOMINION SECURITIES INC.

Defendants.

Case No. CV 11 5232

NOTICE OF REMOVAL

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that SMART Technologies Inc. ("Defendant" or "SMART"), by and through its undersigned attorneys, hereby removes the above-captioned civil action, and all claims and causes of action therein, from the Superior Court of the State of California, County of San Francisco, to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§ 1441, 1446, and 15 U.S.C. § 77p(c). In support of this Notice, Defendant states as follows:

1. On or about September 27, 2011, Plaintiffs Thomas E. Harper and Dianne Keene filed the above-captioned putative class action, under Index No. CGC-11-514673 (the "State Court Action"). Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons and Complaint filed in the State Court Action (the "Complaint") is attached hereto as Exhibit A.

2. The State Court Action is substantively duplicative of an earlier-filed putative class action that had been commenced in the United States District Court for the Northern District of Illinois ("Federal Class Action"), and which was transferred to the United States District Court for the Southern District of New York by opinion dated October 14, 2011. The federal plaintiff filed the Federal Class Action on January 26, 2011, and pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), the United States District Court for the Northern District of Illinois appointed Lead Plaintiff and Lead Counsel in the Federal Class Action on June 16, 2011.

3. In a transparent attempt to end-run the requirements of the PSLRA, Plaintiffs in the State Court Action purport to represent a proposed class of plaintiffs identical to the proposed class represented by the court-appointed Lead Plaintiff in the first-filed Federal Class Action. Moreover, the Federal Class Action alleges Securities Act claims against

SMART relating to SMART's initial public offering that are nearly identical to those asserted in the State Court Action.[1]

Basis for Jurisdiction

4. This action is within the original jurisdiction of this Court under 28 U.S.C. § 1331 and 15 U.S.C. § 77v(a) because it purports to assert federal claims arising under the Securities Act of 1933 (the "Securities Act"). In particular, Plaintiffs assert claims against all Defendants under Sections 11 and 12(a)(2) of the Securities Act. Plaintiffs also assert claims against David A. Martin, Nancy L. Knowlton, G.A. Fitch, Salim Nathoo, Arvind Sodhani, Apax Partners, and Intel Corporation, under Section 15 of the Securities Act.

5. This action is removable under 28 U.S.C. § 1441(a) and the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), Pub. L. No. 105-353, 112 Stat. 3227 (1998). Under 28 U.S.C. § 1441(a), "[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed . . . to the district court of the United States for the district and division embracing the place where such action is pending." There is no question that the claims asserted in the State Court Action could have been filed in a federal court in the first instance. In fact, nearly identical claims actually *were* filed in a federal court in connection with the first-filed Federal Class Action.

6. SLUSA amended the Securities Act to create an exception to the Securities Act's non-removal provision. As amended by SLUSA, Section 22(a) of the Securities Act provides that, "[e]xcept as provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States." 15 U.S.C. § 77v(a) (emphasis added). This case arises under the Securities Act and is thus subject to 15 U.S.C § 77v(a).

[1] Plaintiff in the Federal Class Action voluntarily dismissed the Underwriter Defendants and has informed Defendant SMART that it will be amending the class action complaint to include claims against Apax Partners and Intel Corporation.

7. Section 77p(c) provides that "[a]ny covered class action brought in any state court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending . . . ." 15 U.S.C. § 77p(c). Section 77p(b) states that a covered class action is one alleging "an untrue statement or omission of material fact in connection with the purchase or sale of a covered security" or "that the defendant used or employed any manipulative device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. § 77p(b). As alleged in the Complaint and as set forth below, this action is a covered class action "alleging untrue statement[s] or omission[s] of material fact in connection with the purchase or sale of a covered security," and, therefore, is removable under 15 U.S.C. § 77p(b).

8. Under 15 U.S.C. § 77p(f)(2)(A), a "covered class action" is:

> [a]ny single law suit in which . . . one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members.

A "covered security" is defined to include any security "listed, or authorized for listing, on the National Market System of the NASDAQ Stock market . . . ." 15 U.S.C. § 77p(f)(3); 15 U.S.C. § 77r(b)(1).

9. This action is a covered class action involving a covered security. Here, Plaintiffs seek damages on a representative basis (Compl. ¶ 72), on behalf of a class or purchasers allegedly "so numerous that joinder of all members is impracticable" (Compl. ¶ 73), and the Complaint alleges that there are "questions of law and fact common to the Class" (Compl. ¶ 76), which are related to securities that were publicly offered and are listed on the NASDAQ (Compl. ¶ 8). See 15 U.S.C. § 77p(f)(2)(A); 15 U.S.C. § 77p(f)(3).

10. Accordingly, Plaintiffs' claims are removable to this Court under 28 U.S.C. § 1441 and 15 U.S.C. §§ 77p(c) and 77v. See, e.g., Brody v. Homestore, Inc., 240 F. Supp. 2d 1122, 1124 (C.D. Cal. 2003) ("SLUSA authorizes removal of class actions asserting violations of the 1933 [Securities] Act"); Knox v. Agria Corp., 613 F. Supp. 2d 419, 425 (S.D.N.Y. 2009) (anti-removal provision of the 1933 Securities Act does not apply to

covered class actions raising 1933 Securities Act claims); Rubin v Pixelplus Co., No. 06-CV-2964 (ERK), 2007 WL 778485, at *6 (E.D.N.Y. Mar. 13, 2007) (same); Pinto v. Vonage Holdings Corp., No. 07-0062, 2007 WL 1381746, at *2 (D.N.J. May 7, 2007) (covered class action alleging only federal Securities Act claims was removable); Rovner v. Vonage Holdings Corp., No. 07-178, 2007 WL 446658, *5 (D.N.J. Feb. 7, 2007) (the plain language and legislative history of SLUSA compel the conclusion that class actions asserting Securities Act claims are removable); Alkow v. TXU, No. 3:02-CV2738-K, 2003 WL 21056750 (N.D. Tex. May 8, 2003) (same); see also Luther v. Countrywide Home Loans Servicing LP, 533 F.3d 1031, 1033 n.1 (9th Cir. 2008) (implying that class actions involving solely Securities Act claims and covered securities brought in state court are removable); In re Brody, No. 03-72422, 2004 WL 1870382, at *1 (9th Cir. Aug. 17, 2004) (denying mandamus relief and noting "[w]ithout speculating on how future courts will resolve the issue, we do not have a 'definite and firm conviction' that the district court [in Brody v. Homestore] read SLUSA's inartful removal sections incorrectly").

Procedural Requirements

11. Pursuant to 28 U.S.C. §1446(b), this Notice of Removal is timely because it was filed within thirty days of the earliest date that any of the Defendants learned of the filing of the State Court Action. See Murphy Bros. Inc. v. Michettti Pipe Stringing, Inc., 526 U.S. 344, 347-48 (1999) (time to remove triggered by formal service of process); Desifino v. Reiswig, 639 F.3d 952, 956 (9th Cir. 2011) ("[W]e hold that each defendant is entitled to thirty days to exercise his removal rights after being served.").

12. SMART is authorized to state that all named defendants concur in the removal of this action to this Court, subject to and without waiving any defenses and rights available to them.

13. Pursuant to 28 U.S.C. § 1446(d), Defendant SMART will promptly serve a copy of this Notice on counsel for Plaintiffs and will file a copy of this Notice with the Clerk of the Superior Court of the State of California, County of San Francisco.

14. No other process, pleading, or order has been served on Defendants in this action.

Reservation of Rights

15. SMART does not waive, and expressly preserves, any and all defenses that it may have including, but not limited to, lack of personal jurisdiction.

WHEREFORE, SMART respectfully removes this action from the Superior Court of the State of California, San Francisco County to the United States District Court for the Northern District of California.

Respectfully submitted,

DATED: October 26, 2011

SIDLEY AUSTIN LLP

Sara B. Brody / CYC

SARA B. BRODY

Attorneys for Defendant
SMART TECHNOLOGIES INC.

EXHIBIT A

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Smart Technologies, Inc.,
See Additional Parties Attachment

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Thomas E. Harper and Dianne Keene, Individually and on Behalf of All Others Similarly Situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court,
400 McAllister Street,
San Francisco, CA 94102

CASE NUMBER: (Número del Caso): CGC-11-514673

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Anne Box, Scott+Scott LLP, 707 Broadway, Suite 1000, San Diego, CA 92101, 619/ 233-4565

CLERK OF THE COURT

DATE: *(Fecha)* SEP 27 2011 Clerk, by *(Secretario)* ELIAS BUTT, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:

4. ☐ by personal delivery on *(date)*:

SUM-200(A)

SHORT TITLE: Harper v. Smart Technologies, Inc., et al.	CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☑ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

DAVID A. MARTIN, NANCY L. KNOWLTON, G.A. FITCH, SALIM NATHOO, ARVIND SODHANI, INTEL CORPORATION, APAX PARTNERS, MORGAN STANLEY & CO. INC., DEUTSCHE BANK AG, and RBC DOMINION SECURITIES INC.

Page 1 of 1

Harper v. Smartech, et al.

SCHEDULE A TO SUMMONS

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SAN FRANCISCO COUNTY SUPERIOR COURT

2011 SEP 27 AM 1:09

CLERK OF THE COURT

BY: ELIAS BUTT

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Counsel for Plaintiffs

[Additional Counsel on Signature Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-11-514673

THOMAS E. HARPER and DIANNE KEENE, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. SMART TECHNOLOGIES, INC., DAVID A. MARTIN, NANCY L. KNOWLTON, G.A. FITCH, SALIM NATHOO, ARVIND SODHANI, INTEL CORPORATION, APAX PARTNERS, MORGAN STANLEY & CO. INC., DEUTSCHE BANK AG, and RBC DOMINION SECURITIES INC. Defendants.	CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE SECURITIES ACT OF 1933 JURY TRIAL DEMANDED FILED BY FAX

Plaintiffs, Thomas E. Harper and Dianne Keene (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, by Plaintiffs' undersigned attorneys, for Plaintiffs' complaint against defendants, allege the following based upon personal knowledge as to Plaintiffs and Plaintiffs' own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiffs' attorneys, which included, among other things, a review of Smart Technologies Inc.'s ("Smart Tech" or the "Company") press releases, Securities and Exchange Commission ("SEC") filings, analyst reports, media reports and other publicly disclosed reports and information about the defendants. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a securities class action on behalf of Plaintiffs and all other persons or entities, except for defendants, who purchased or otherwise acquired the common stock of Smart Tech pursuant and/or traceable to the Company's initial public stock offering of over $660 million on or around July 20, 2010 (the "IPO" or "Offering") seeking to pursue ***strict liability*** remedies under the Securities Act of 1933 (the "Securities Act").

INTRODUCTION AND BACKGROUND TO THE ACTION

2. Smart Tech designs, develops, and sells interactive technology products and solutions that enhance learning and enable people to collaborate in innovative and effective ways. The interactive global whiteboard product is the core of the Company's interactive technology solutions. Those "interactive whiteboards" are capable of displaying a computer's video output on a large touch screen. By touching the surface of the whiteboard, users can control computer applications, access the internet, write in digital ink and save and share work. Smart Tech's products were used on CNN's television news program "The Situation Room" during the show's broadcast of the 2008 presidential election results.

3. Smart Tech's whiteboards are used in classrooms and businesses throughout North America. The majority of the Company's revenue comes from North America. The Company sells its interactive whiteboards primarily through its reseller network to education, business and government customers.

4. Smart Tech currently maintains a network of approximately 365 direct dealers and distributors, some of which conduct business in California, to assist in selling Smart Tech products. These

dealers and distributors receive support and training from Smart Tech to assist end-users during installation and to handle problems that may arise after installation. Similarly, the Company spends millions of dollars every year in Research and Development costs in order to keep the Company current in the technology field.

5. On April 21, 2010, Smart Tech acquired NextWindow, an Auckland, New Zealand-based company for $82 million, net $8 million in cash reserves at the time of the acquisition. NextWindow is an optical touch company whose technologies and solutions are used in touch-enabled PC displays as well as stand alone interactive displays. The Company stated to the investing public and analysts that the acquisition of NextWindow would enable Smart Tech to enter a new market segment by leveraging the NextWindow technology in developing future generations of Smart Tech's core products, as well as synergies with Smart Tech's intellectual property and product development activities. What the defendants did not disclose to investors, however, were the circumstances that led to the acquisition of NextWindow.

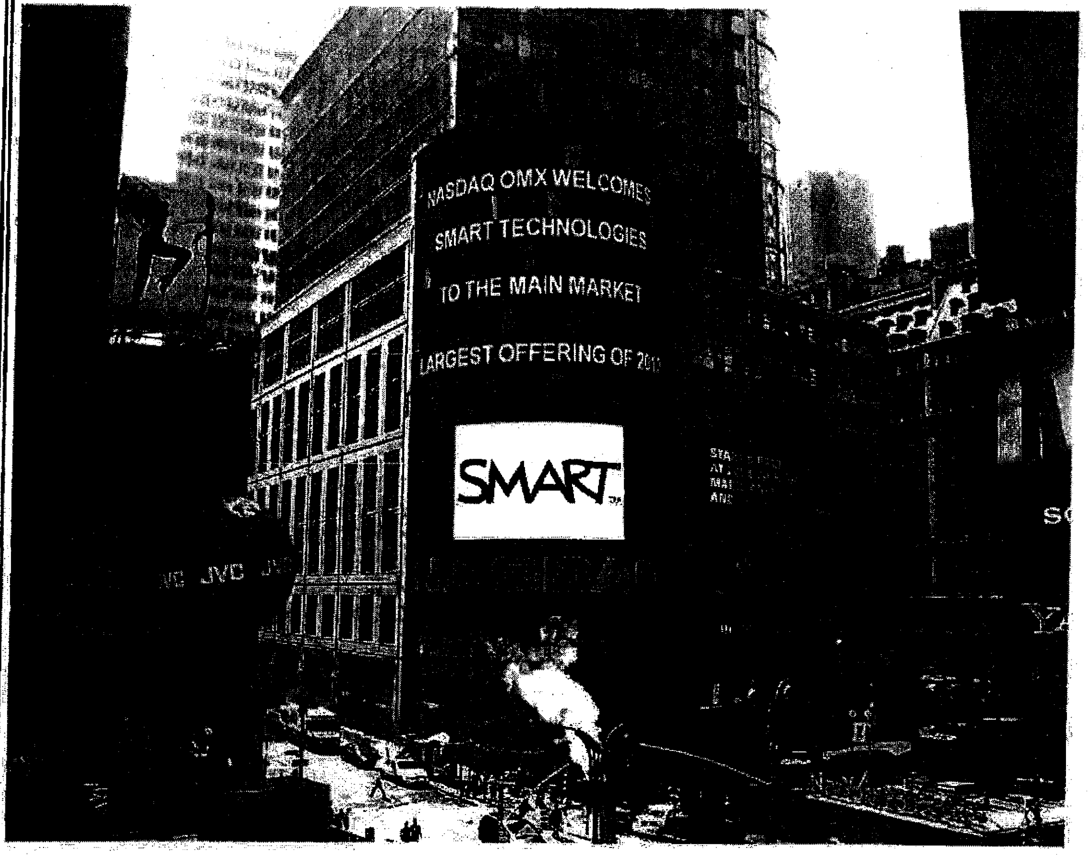
6. Prior to its acquisition of NextWindow, Smart Tech filed suit against NextWindow in the Northern District of Illinois alleging that NextWindow had infringed upon at least four of Smart Tech's patents (the "Patent Dispute"). In response, NextWindow alleged inequitable conduct on the part of Smart Tech in obtaining the patents and further claimed that the patents were invalid and unenforceable. Smart Tech announced the acquisition of NextWindow on April 25, 2010, and dismissed its suit against NextWindow with prejudice three days later on April 28, 2010, before any judicial determination was reached on the validity of the patents.

7. Additionally, at the time Smart Tech acquired NextWindow, NextWindow software had a limited amount of "touch" applications for Windows 7. Windows 7 is a series of operating systems produced by Microsoft for use on personal computers.

8. On June 24, 2010, the Company filed its initial Registration Statement with the SEC and after several amendments, the SEC declared the Registration Statement effective on July 14, 2010. On July 15, 2010, the Company filed its Prospectus with the SEC and made it available to the investing public. That same day, 3,883,000 shares of Smart Tech stock were offered for sale at $17.00 per share. The $660 million IPO was completed on July 20, 2010. The Company received 23% of the proceeds while selling shareholders including Intel Corporation ("Intel") and Apax Partners ("Apax") took the remaining 77% of the proceeds, reaping more than a six-fold gain on average. The Smart Tech IPO was the largest IPO, year-

to-date, on the NASDAQ stock exchange, and the largest IPO for a Canadian Tech company in over a decade.

9. The Registration Statement and Prospectus (collectively referred to as the "Registration Statement," unless otherwise specified), distributed in connection with the Company's IPO contained false statements and omissions of material facts concerning the Company's acquisition of NextWindow, the Company's global distribution network and Research and Development ("R&D") expenses. Specifically, the Registration Statement stated: (1) that the Company would be able to leverage NextWindow's technologies and relationships to allow it to accelerate its ability to expand into other markets; (2) that the Global Sales and Distribution Network would be a competitive advantage to the Company enabling it to increase revenue outside the U.S., U.K., and Canada; (3) that R&D costs would not change materially as a percentage of revenue; and (4) that the NextWindow's patent portfolio would strengthen the Company's existing portfolio and help maintain leadership in technology innovation but did not disclose the Patent Dispute between Smart Tech and NextWindow.



10. The Smart Tech NextWindow story began unraveling in November 2010 when the Company announced in its press release a 22% drop in earnings and slower than expected sales in its NextWindow business. During the Company's second quarter 2011 earnings conference call on November 9, 2010, President and Chief Executive Officer ("CEO") Nancy Knowlton stated that the Company was lowering its revenue outlook for 2011, due in part to "lower-than expected performance of our recently-acquired NextWindow business." NextWindow accounted for half of the Company's revenue adjustment. CEO Knowlton acknowledged the lack of sales with respect to NextWindow was due to the "limited number of touch applications developed for the Windows 7 operating system" which would result in limited growth in the NextWindow business until the launch of Windows 8. To date, Windows 8 does not have a release date. In fact, because Windows 7 has been so successful, a release of Windows 8 too quickly may be met with resistance. Microsoft also recently announced that the next generation of hardware will still use the Windows 7 operating system. However, on the same call Defendant Knowlton stated "the Company remains well positioned to deliver against the profitability objective we set at the beginning of the year" and then focused on why the Company remained "as positive as ever about SMART's market position and growth opportunity."

11. On this news, Smart Tech's common stock fell precipitously, closing down over 30% and erasing approximately $184 million in market capitalization in just one day. On January 3, 2011, Bloomberg listed SMART Technologies as the single worst performing IPO of 2010 (out of 178 IPOs), with a decline of $294 million in market capitalization for the year.

12. Unbeknownst to investors, prior to the IPO, Smart Tech's risky decision to acquire NextWindow without confirming its compatibility with Windows 7, while at the same time not disclosing the Patent Dispute, misrepresented risks associated with the purchase of Smart Tech stock in the Offering.

13. On May 18, 2011, the full truth about the NextWindow acquisition, the Company's Global Distribution Network and R&D expense was revealed. That day, the Company reported in its press release that R&D expenses had increased, instead of "not materially" changed as represented in the Registration Statement. Additionally, it was disclosed during the Company's fourth quarter conference call that same day that the Company expected only "slight growth" from NextWindow. And during that same conference call, it was reported that the global sales and distribution network was still in an early developmental stage.

Additionally, Smart Tech had not developed anything even close to a global distribution and sales network. In fact, the network was still in the early developmental stage and lacked the scale to further increase revenues and growth as falsely represented in the Registration Statement. And, unbeknownst to investors, Smart Tech's R&D expenses were increasing, not remaining materially unchanged, after the IPO.

14. Essentially, unbeknownst to investors, Smart Tech took the Company public without ensuring the compatibility of NextWindow software with Windows 7, while at the same time R&D expenses were increasing, not remaining the same, and at a time when its global sales and distribution network was undeveloped. The IPO simply allowed its executives and directors as well as Intel and Apax to cash out and take profits and for management to realize substantial capital gains. This action seeks recovery, including rescission, for innocent purchasers who suffered many millions of dollars in losses when the truth about Smart Tech emerged and its stock price plummeted.

SUMMARY AND OVERVIEW OF THE ACTION

15. Smart Tech's core technology product is the Smart Board interactive whiteboard. The Company's first interactive whiteboard was introduced in 1991. An interactive whiteboard is a large interactive display that connects to a computer and a projector and allows users to control the computer using a pen, finger, or other device. As stated by the Company in its Prospectus, the interactive whiteboards "Are the result of more than 20 years of technological innovations." The whiteboards are designed to serve as the focal point of a broad technology platform in classrooms and meeting rooms.

16. The IPO was effected through a Registration Statement on Form F-1 (File No. 333-167738) declared effective by the SEC on July 14, 2010. Over 38 million shares of Smart Tech common stock were sold on July 15, 2010 by Smart Tech, pursuant to the Prospectus made available to Smart Tech investors. Underwriters Morgan Stanley & Co. Inc., Deutsche Bank AG, and RBC Dominion Securities (collectively, the "Underwriter Defendants"), shared an estimated $26 million in underwriting fees in connection with the IPO. Net of underwriting fees and other expenses, Smart Tech received approximately $147.7 million in proceeds from the IPO. The Company's stock also began trading on the Nasdaq Global Market under the symbol "SMT" following the IPO.

17. Defendants in this action include Smart Tech, the Smart Tech executives and directors, Intel, Apax, and the underwriters to the IPO (collectively, the "Defendants"). In violation of the Securities Act,

Defendants were negligent by issuing false and misleading statements and omitting material facts from the Registration Statement and Prospectus that the Company filed with the SEC in support of the Offering. Defendants negligently allowed the Registration Statement to paint a rosy picture of the Company's acquisition of NextWindow and the Company's presence in the global sales and distribution market at a time when Smart Tech's R&D expenses were increasing as a percentage of revenue rather than not materially changing.

18. Specifically, under the applicable SEC rules and regulations governing the preparation of the Registration Statement (and the financial statements and related SEC filings incorporated therein by reference), Defendants were negligent in failing to disclose or indicate, at the time of the IPO, the following material facts: (1) that the NextWindow acquisition could not accelerate the Company's ability to expand in the interactive touch market because NextWindow's software applications were incompatible with Windows 7; (2) the Registration Statement completely omitted any reference to the patent lawsuit filed by the Company against NextWindow prior to its acquisition and subsequently dismissed three days after the NextWindow acquisition; (3) that the Company's growth in its global sales and distribution networks was not well-established and could not increase revenue generated outside of the United States, Canada, and the United Kingdom; (4) that R & D expenses were increasing, not remaining materially unchanged; and (5) as a result of the foregoing, the Company's Registration Statement was false and misleading at all relevant times.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over the causes of action asserted herein pursuant to the California Constitution, Article VI, §10, because this case is a cause not given by statute to other trial courts. This action is not removable. The claims alleged herein arise under §§11, 12(a)(2) and 15 of the Securities Act. *See* 15 U.S.C. §§77k, 77l(a)(2) and 77o. Jurisdiction is conferred by §22 of the Securities Act and venue is proper pursuant to §22 of the Securities Act. Section 22 of the Securities Act explicitly states that "[e]xcept as provided in section 16(c), no case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court in the United States." Section 16(c) refers to "covered class actions," which are defined as lawsuits brought as class actions or brought on behalf of more than 50 persons asserting claims under state or common law. This is an action asserting federal law claims.

Thus, it does not fall within the definition of "covered class action" under §16(b)-(c) and therefore is not removable to federal court.

20. This Court has personal jurisdiction over each of the Defendants named herein because they conducted business in, resided in and/or were citizens of California at the time of the IPO. Over 60 of Smart Tech's dealers and distributors conduct business in California, 20 of which conduct business in the San Francisco Bay area. These dealers and distributors receive support and training from Smart Tech in order to assist end-users during installation and to handle problems that may arise after installation. Defendant Sodhani is a resident of San Francisco, California.

21. The Underwriter Defendants conduct business and maintain offices in this county. Some, if not all, of the underwriting documents pertaining to the IPO are located in this county. Additionally, Defendants' counsel for the IPO, Sidley Austin, conducts business in and maintains an office in San Francisco, California.

22. Venue is proper in this Court because many of the acts complained of including the dissemination of materially false and misleading statements and reports prepared by or with the participation, acquiescence, encouragement, cooperation, or assistance of Defendants, occurred, at least in part, in this county.

PARTIES

23. Plaintiffs Thomas E. Harper and Dianne Keene purchased Smart Tech common stock pursuant and/or traceable to the IPO and were damaged thereby.

24. Defendant Smart Technologies ("Smart Tech," or "the Company") is a corporation based in Calgary, Alberta, Canada, and its shares are traded on the NASDAQ exchange. The Company does business in California, and maintains an active network of dealers and distributors in the state. In its motion to transfer venue pending before the Northern District of Illinois (Case No. 1:11-cv-0-583) ("Motion to Transfer Venue"), Smart Tech stated that most of the U.S. activity related to the IPO took place in New York and California. The motion and memorandum in support also stated that Smart Tech's counsel for the IPO was based in New York and San Francisco, California, and that documents relating to the IPO would likely be in California.

25. Defendant Intel was originally incorporated in the State of California in 1968 as NM Electronics Inc. The company soon became known as Intel Corporation and merged with Intel Corporation of Delaware, with Intel Delaware as the surviving corporation. Intel made its first investment in Smart Tech in 1992, and has long been one of Smart Tech's primary shareholders. After Smart Tech's IPO, Intel continues to own approximately 14% of Smart Tech, and holds 20.8% of the voting power. Presently and at the time of the July IPO, Intel's principal executive offices were located at 2200 Mission College Blvd., Santa Clara, California 95054. Executive Vice President of Intel and President of Intel Capital, Arvind Sodhani, as Intel's representative on Smart Tech's Board of Directors, signed the false and misleading Registration Statement. Intel maintains its principal place of business in Santa Clara, California, and conducts business and sells its products in this county. Intel, as a controlling shareholder, signed the false and misleading Registration Statement through its representative on the Board of Directors, Defendant Sodhani.

26. Defendant Apax Partners, LLP ("Apax") is a leading private equity and venture capital firm. Funds advised by Apax own a significant position in Smart Tech. The Apax funds originally purchased a 49.9% stake in Smart Tech in August of 2007. After Smart Tech's IPO, Apax funds continue to own approximately 28% of Smart Tech, and hold approximately 41.5% of the total voting power. Apax partner Salim Nathoo, as Apax's representative on Smart Tech's Board of Directors signed the false and misleading Registration Statement. Apax, as a controlling shareholder, signed the false and misleading Registration Statement through its representative on the Board, Defendant Nathoo.

27. Defendant David A. Martin ("Martin") is, and was at the time of the IPO, Smart Tech's Chairman of the Board of Directors, co-founder of the Company and was appointed its Executive Chairman in January 2007. Martin has been a director of the Company or its predecessors since 1987. Defendant Martin signed the false and misleading Registration Statement. Defendant Martin is a resident of Calgary, Alberta, Canada. Defendant Martin, together with his wife, Defendant Nancy L. Knowlton, owns property in La Quinta, California.

28. Defendant Nancy L. Knowlton ("Knowlton") is, and was at the time of the IPO, a director and co-founder of the Company and was appointed President and CEO in June 2007. Knowlton has been a director of the Company or its predecessors since 1987. Defendant Knowlton signed the false and

misleading Registration Statement. Defendant Knowlton is a resident of Calgary, Alberta, Canada. As mentioned above, Knowlton, together with her husband Defendant David A. Martin, owns property in La Quinta, California. Defendant Knowlton, on more than one occasion, conducted business on behalf of Smart Tech in San Francisco, California by making presentations at technology, media and telecom conferences in February 2011.

29. Defendant G. A. "Drew" Fitch ("Fitch') is a director and has been the Company's Chief Financial Officer and Vice President of Finance since 2009. Defendant Fitch signed the false and misleading Registration Statement. Defendant Fitch is a resident of Calgary, Alberta, Canada.

30. Defendant Salim Nathoo has been a director of the Company since August 2007, following Apax Partners' investment in the Company. Defendant Nathoo was Apax Partners' representative on the Company's Board of Directors. At the time of the IPO, Nathoo was also a member of the Board's Audit Committee. Defendant Nathoo signed the false and misleading Registration Statement. Defendant Nathoo is also a partner and global co-head of Apax Partners' technology and telecom team. Defendant Nathoo is a former director of Sonim Technologies, a company based in San Mateo, California. Defendant Nathoo is also an independent director of IGATE Corporation, which has offices in Fremont, California. Defendant Nathoo is a resident of London, England.

31. Defendant Arvind Sodhani ("Sodhani") is a resident of California and has been a director of the Company since August 2007. Defendant Sodhani currently serves as the Executive Vice President of Intel and is the President of Intel Capital. Defendant Sodhani was Intel's representative of the Board of Directors. Defendant Sodhani signed the false and misleading Registration Statement. Intel Capital is the strategic investment arm of Intel which directs Intel's external investments and mergers and acquisitions in support of Intel's strategic objectives. Since 1981, Sodhani has served Intel in various capacities including Treasurer and Senior Vice President. Defendant Sodhani is a resident of San Francisco, California.

32. Defendant Morgan Stanley and Co., Inc. ("Morgan Stanley") was an underwriter of the Company's Offering and served as a financial advisor and assisted in the preparation and dissemination of Smart Tech's false and misleading Registration Statement. Defendant Morgan Stanley conducts business in this county out of its offices at 555 California Street, San Francisco, California 94104. Morgan Stanley's managing director, Jeff Hoffmeister, stated in the Motion to Transfer Venue and an attached exhibit, that one

of Morgan Stanley's underwriting teams for the Smart Tech IPO was located in its Menlo Park, California office and that documents relating to the IPO would likely be located there.

33. Deutsche Bank AG ("Deutsche Bank") was an underwriter of the Company's Offering, and served as a financial advisor and assisted in the preparation and dissemination of Smart Tech's false and misleading Registration Statement. Defendant Deutsche Bank conducts business in this county out of its offices at 101 California Street, San Francisco, California 94111. Stephen Pettigrew, a director in Deutsche Bank's technology investment banking group, stated in the Motion to Transfer Venue and an attached exhibit, that Deutsche Bank's underwriting team was based in San Francisco and New York, and that documents relating to the Smart Tech IPO would likely be maintained in San Francisco, California.

34. Defendant RBC Dominion Securities, Inc. ("RBC Dominion") was an underwriter of the Company's Offering, and served as a financial advisor and assisted in the preparation and dissemination of Smart Tech's false and misleading Registration Statement. RBC Dominion's parent company, RBC Wealth Management, conducts business in this county out of its office at 345 California St., Suite 1600, San Francisco, California 94101. RBC Dominion is a member of Royal Bank of Canada. Kirby Gavelin, a managing director and head of the equity capital markets for RBC Dominion, stated in the Motion to Transfer Venue and an attached exhibit, that one part of RBC's underwriting team for the Smart Tech IPO was based in San Francisco, and that documents would likely be maintained in San Francisco.

35. Pursuant to the Securities Act, the Underwriter Defendants are liable for the false and misleading statements in the IPO's Registration Statement and Prospectuses. These Defendants' failure to conduct adequate due diligence investigations was a substantial factor leading to the harm complained of herein.

a. The Underwriter Defendants are investment banking houses which specialize, *inter alia*, in underwriting public offerings of securities. They served as the underwriters of the IPO and received more than $26 million in fees collectively. The Underwriter Defendants determined that in return for their share of the IPO, they were willing to merchandize Smart Tech stock in the Offering. The Underwriter Defendants arranged a multi-city road show prior to the Offerings during which they, and certain of the Individual Defendants, met with potential investors and presented highly favorable information about the Company, its financial prospects and its sales and reimbursement practices.

b. Representatives of the Underwriter Defendants also assisted Smart Tech and the Individual Defendants in planning the Offering, and purportedly conducted an adequate and reasonable investigation into the business and operations of Smart Tech, an undertaking known as a "due diligence" investigation. The due diligence investigation was required of the Underwriter Defendants in order to engage in the Offering. During the course of their "due diligence," the Underwriter Defendants had continual access to confidential corporate information concerning Smart Tech's business sales model, financial condition, internal control and its future business plans and prospects.

c. In addition to availing themselves of access to internal corporate documents, agents of the Underwriter Defendants, including their counsel, met with Smart Tech's lawyers, management and top executives to determine: (i) the strategy to best accomplish the Offering; (ii) the terms of the Offering, including the price at which Smart Tech's stock would be sold; (iii) the language to be used in the Registration Statement; (iv) what disclosures about Smart Tech would be made in the Registration Statement; and (v) what responses would be made to the SEC in connection with its review of the Registration Statement. As a result of those constant contacts and communications between the Underwriter Defendants' representatives and Smart Tech's management and top executives, the Underwriter Defendants knew, or should have known, of Smart Tech's existing problems, and misstatements and omissions contained in the Registration Statement as detailed herein.

d. The Underwriter Defendants caused the Registration Statement to be filed with the SEC and declared effective in connection with offers and sales thereof, including to Plaintiffs and the Class.

SUBSTANTIVE ALLEGATIONS

Background

36. Smart Tech is a publicly traded company headquartered in Calgary, Alberta, Canada. Founded in 1987, Smart Tech is best known as the developer of the Smart Board interactive whiteboard. After its first whiteboard product was released in 1991, the Company recently celebrated installing its two millionth interactive whiteboard. Following the Company's IPO, analysts hailed Smart Tech as the "Apple of the Wall."

37. Intel Corporation is a publicly traded corporation, incorporated in Delaware and headquartered in Santa Clara, California. Intel is the world's largest semiconductor chip maker. The

company had revenues of over $43 billion in 2010, and has around 82,500 employees. Smart Tech has a licensing agreement with Intel and conducts business with the Company.

38. On February 20, 2009, Smart Tech filed a lawsuit against NextWindow in the Northern District of Illinois, alleging that NextWindow had infringed upon at least four of Smart Tech's patents. On May 21, 2009, NextWindow replied to Smart Tech's complaint alleging inequitable conduct on the part of Smart Tech in obtaining its patents and also claiming that Smart Tech's patents were invalid and not enforceable. Nowhere in the Registration Statement or Prospectus is the prior litigation between the two companies revealed. The case was dismissed with prejudice on April 28, 2010, three days after Smart Tech acquired NextWindow and before any judicial determination was reached on the validity of the challenged patents.

39. On April 21, 2010, Smart Tech acquired NextWindow, an Auckland, New Zealand company, for a fee of $82 million, net NextWindow's cash reserves. NextWindow was a designer and manufacturer of optical touch technology. NextWindow supplied optical touch panels and touch-screen technology to electronics manufacturers. The Company stated that the acquisition of NextWindow would enable Smart Tech to enter a new market segment by leveraging the NextWindow technology in developing future generations of Smart Tech's core products, as well as synergies with Smart Tech's intellectual property and product development activities. The apparent success of this acquisition depended on the compatibility of NextWindow with Windows 7 applications. The Windows 7 Operating System had been on the market since October 2009, and in fact had been previewed to companies as early as a January 2009 beta release.

40. On April 25, 2010, the Company announced the NextWindow acquisition in a press release stating that the NextWindow "acquisition extends SMART's current presence in the education, business and government sectors into the broader consumer market."

41. In preparation for the Company's IPO, on June 24, 2010, Smart Tech issued a media release entitled "SMART Technologies Files for Proposed Initial Public Offering." In the release, the Company announced it had filed a registration statement with the SEC and prominently portrayed itself as "***a global provider of interactive whiteboards***" offering 38,830,000 of its Class A Subordinate Voting Shares to at a price to the public at $17.00 per share, which reflects an increase of 10% from the anticipated number of shares being offered.

[Emphasis added.]

42. On August 12, 2010, the Company announced its first quarter 2010 financial results, characterizing itself as, "*a global provider of interactive whiteboards*," announcing financial results for its first quarter ended June 30, 2010." Defendant Knowlton discussed the importance of the IPO to the growth of the Company:

> The successful completion of the IPO in July was an important milestone for our company. With greater brand awareness and enhanced resources, ***SMART is well positioned to execute its growth strategy and further strengthen its position as the world leader in interactive whiteboard technology.***

[Emphasis added.]

The Truth Begins to Emerge

43. On November 9, 2010, Smart Tech issued its earnings press release, reporting that its earnings for the second quarter of 2011 had fallen by 22%, citing slower than anticipated sales with respect to its recently acquired NextWindow business. On this news, Smart Tech's shares dropped $5.16 per share from $13.07 per share on November 9, 2010 to $8.91 per share on November 10, 2010, a one-day decline of 39% per share on volume of 17.84 million shares, over 27.5 times the preceding three-month's daily average. The 17.84 million share volume was also 4.66 times higher than the previous high of 3.8 million shares on July 16, 2010, the day after the IPO.

44. Beginning with the Company's second quarter fiscal 2011 earnings conference call on November 9, 2010, the market began to partially learn the truth about Smart Tech's acquisition of NextWindow and its incompatibility with Windows 7. During that call, Defendant Knowlton stated:

> We have adjusted our fiscal 2011 revenue outlook lower by approximately $80 million due to lower-than-expected performance of our recently-acquired NextWindow business and the more conservative near-term growth estimates for the North American market.
>
> Through the demonstration of operating leverage in our business model, we believe the Company remains well positioned to deliver against the profitability objective we set at the beginning of the fiscal year.
>
> Let me review the two areas that caused us to revise our second-half revenue outlook, and then I'll focus on why we remain as positive as ever about SMART's market position and growth opportunity. ***I'll start with the NextWindow acquisition, which accounts for half of our revenue adjustment for the year.***

* * *

> ***We believe the softness in NextWindow's sales is largely market-driven, as touch-enabled PCs are getting less take-up due to the limited number of touch applications developed for the Windows 7 operating system.*** As a result, feedback in the marketplace suggests that we are likely going to see limited growth in this area's NextWindow business until the launch of Windows 8.

November 9, 2010 Conference Call Transcript at 2-3. [Emphasis added.]

45. During that same call, Defendant CFO Fitch broke out the second quarter revenue contribution from NextWindow:

> As Nancy pointed out, revenue contribution from our NextWindow acquisition has not developed to the degree we had been anticipating, primarily due to the lack of touch applications for Windows 7. NextWindow contributed about $6.5 million to second-quarter revenues, compared to $8.8 million in the first quarter.

November 9, 2010 Conference Call Transcript at 5.

46. Despite the decline in revenue from the first quarter to the second quarter, Defendant Fitch touted the contribution NextWindow would make to the Company:

> Despite the sequential decline in revenues contributed from NextWindow, we continue to expect to leverage NextWindow's technology to accelerate innovation in future generations of our products, as well as leverage some of our technology in NextWindow's product line.

Id.

47. However, Defendant Fitch lowered guidance for the Company's fiscal 2011:

> For fiscal year 2011, we now expect revenues to be in the range of $770 million to $805 million, compared to our previous guidance of $850 million to $885 million. The adjustment reflects a $40 million reduction in our outlook for NextWindow's revenue contribution . . .

November 9, 2010 Conference Call Transcript at 7.

48. R&D expenses are encompassed within cash operating expenses. During the November 9, 2010 Conference Call, Defendant Fitch reassured analysts and investors that R&D expenses would not materially change:

> As a percent of revenues, cash operating expenses were 23% during the second quarter, which is equivalent to last year.
>
> * * *
>
> We expect cash operating expenses to trend a little bit higher in the back half of the year as we continue to invest in our R&D, marketing, and sales infrastructure to support our growth.

November 9, 2010 Conference Call Transcript at 6, 7.

49. During the November 9, 2010 Conference Call, RBC Capital Markets analyst Mike Abramsky questioned CEO Knowlton about why she did not know of the problems with touch demand when Smart Tech acquired NextWindow given that Windows 7 was out prior to the acquisition:

> My question is on NextWindow. Can you talk about why you didn't, perhaps, see some of these headwinds on touch demand that are affecting NextWindow that came below your expectation earlier? Windows 7 was out when you did acquire the company. So maybe you could just give us some insight there.
>
> CEO Knowlton responded:
>
> I think it's a matter of the orders that would've come through from some of the third parties that are – that have their names on these products, and so they were not seeing end-user demand clear their inventory. . . . So, what we saw as maybe a slowdown or, another way of looking at it, not the pick-up in orders in the quarter that NextWindow was expecting instead. There were – inventories that some of the companies held, and they were depleting those inventories.

November 9, 2011 Conference Call Transcript at 9.

50. RBC Capital Markets analyst, Mike Abramsky, reacted to this news by downgrading his rating for Smart Tech stock from "Outperform" to "Sector Perform," lowering the price target from $17 to $12. He wrote, "We now see higher investor risks and range-bound valuation, given lowered FY 2011 revenue outlook and under-performance of its NextWindow acquisition." He went on to say that, "We expect Smart to experience multiple compression and valuation pressure in the near term due to significantly diminished near-term growth and shaken investor confidence."

51. To date, Windows 8 does not have a release date. In fact, because Windows 7 has been so successful, a release of Windows 8 too quickly may be met with resistance. Microsoft also recently announced that the next generation of hardware will still use the Windows 7 operating system.

52. During that same conference call, Defendant Knowlton reassured investors and analysts about the growth opportunities in the Europe, Middle East, Africa ("EMEA"):

> We are excited about the growth opportunities in EMEA and believe that we are beginning to realize the benefits of investments we have made to build out our infrastructure and sales resources in this region. Going forward, we will continue to focus our efforts on expanding in underpenetrated markets where we see significant growth opportunity.

November 9, 2011 Conference Call Transcript at 4.

53. The full truth about the Company's misstatements and omissions in the Registration Statement finally emerged in May 2011 when the Company reported in its May 18, 2011 press release that

its operating expenses for the fourth quarter 2011 had increased from $52 million to $64 million, or 33% to 38% as a percentage of revenue. On this news, Smart Tech's share dropped $2.71 per share from $9.72 per share on May 18, 2011 to $7.01 per share on May 19, 2011, a one-day decline of 27.8% per share on volume of 8.98 million shares, over 21 times the preceding three-month's daily average. Defendant Knowlton discussed how the Company's fourth quarter profitability was impacted by additional costs related to R&D capabilities and the Company's global infrastructure in the Company's press release:

> While fourth quarter profitability was impacted by additional costs related to strengthening our research and development capabilities, ecosystem and global infrastructure, we believe it is critical to make these investments now to maintain our long-term competitive edge in the market and to take advantage of emerging opportunities.

54. During the Company's May 18, 2011 Earnings Conference Call, Defendant Knowlton discussed how the impact of investing in global expansion resulted in increased operating expenses:

> During the fourth quarter, we . . . continued to invest in infrastructure to support global expansion, all of which resulted in higher than anticipated operating expense.

May 18, 2011 Conference Call Transcript at 3.

55. Defendant Fitch further commented, "[t]he growth in operating expense primarily reflected the combination of increased investments in product development and ecosystems, as well as investment in infrastructure to support our global expansion." *Id.* at 4.

56. During the call, a Credit Suisse analyst asked for an update on NextWindow revenues:

> [A]nd then could you provide us an update on where the NextWindow revenues are tracking and what your expectations are within the guidance that you provided?"

57. CFO Fitch responded:

> We actually aren't actually breaking out NextWindow since so many of our components are being sold into our products. So it's misleading – it would be misleading to just pull their revenues out because their revenues wouldn't have any comps. But I said overall their – our expectations on the guidance would be slight for growth in NextWindow's component business both on a revenue and unit basis.

58. An unidentified Credit Suisse analyst questioned Defendant Fitch about the reported increase in operating expense, to which Fitch responded:

> [w]here we were spending our money, . . . – largely increasing spending in our R&D as we look at fiscal 2011, generally and in particular as we look at the quarter, we are spending more money on our business-oriented products. So that being our Meeting Pro and related products.

May 18, 2011 Conference Call Transcript at 10, 13.

59. On May 19, 2011, Piper Jaffray downgraded Smart Tech stock to "neutral" identifying the Company's underdeveloped infrastructure in emerging markets, *i.e.*, the lack of global presence as a reason to downgrade the stock:

> Potential catalysts for growth such as an expanding corporate sales channel and growth from emerging markets remain in the early developmental phase and lack the scale to make up for the shortfall in developed markets.

Troy D. Jensen, "Lack of Near-Term Growth Catalysts Prompts Downgrade to Neutral," Smart Technologies, May 19, 2011.

60. The report also discussed revenue from sales outside North America, including the Europe, Middle East, and Africa (EMEA) segment, only accounted for 8.8% of sales:

> ***On previous calls, EMEA was highlighted as an area of growth and we find it noteworthy that no such language permeated during the earnings call.***
>
> Sales by Geography – Revenues in North America grew just 5% year/year to $109.5 million but declined 5.5% sequentially. EMEA [Europe, Middle East and Africa] sales of 43.1 million grew just 1.6% year/year and declined 15.8% sequentially against a tough comp in FQ3. . . . ROW [Rest of World Sales] has clearly paid off with revenues growing 64%year/year and 6/5% sequentially to $14.7 million. At only 8.8% of sales, the ROW segment is not yet large enough to significantly move the growth needle.

Id. at 3. [Emphasis added.]

61. Smart Tech stock continues to trade in the range of $4.00 per share, after falling as low as $3.95 per share on September 23, 2011.

THE FALSE AND MISLEADING REGISTRATION STATEMENT

62. On June 24, 2010, Smart Tech filed with the SEC a Form F-1 Registration Statement for the IPO that went through several rounds of amendments before being declared effective by the SEC on July 14, 2010. On July 15, the Company filed its Prospectus with the SEC and made it available to investors, selling more than 38,830,000 shares of stock at $17.00 a share, putting the value of its IPO at more than $660 million. The Registration Statement contained material false and misleading statements, omitted to state other facts necessary to make the statements made not misleading and was not prepared in accordance with the rules and regulations governing its preparation.

63. When describing the purported advantages of the NextWindow acquisition, the Company stated in its Registration Statement and Prospectus that:

> We expect to leverage NextWindow's technologies with ours to accelerate innovation in future generations of our interactive whiteboards. We also expect that NextWindow's existing relationships with leading PC display manufacturers and other electronics equipment manufacturers will accelerate our ability to expand into the market for interactive touch products other than interactive whiteboards."

Prospectus at 4.

64. This statement in the Registration Statement concerning NextWindow was materially inaccurate and misleading. Defendants failed to disclose that NextWindow's touch screen technology was not fully compatible with Windows 7, which Microsoft had released in October 2009 – nine months prior to the July 2010 IPO. The limited compatibility of NextWindow with Windows 7 limited NextWindow's potential growth in the marketplace. Smart Tech omitted from the Registration Statement material information concerning the patent lawsuit filed by Smart Tech against NextWindow which was subsequently dismissed three days after the purchase of NextWindow. Smart Tech admitted during its second quarter earnings conference call in November 2010 that NextWindow was likely to see limited growth until the introduction of Windows 8. And despite having broken out revenue from NextWindow on the November 2010 Conference Call, Defendants refused to give a revenue breakdown on the May 18, 2011 earnings conference call, stating that expectations would be slight for NextWindow's component business both on a revenue and a unit basis. To date, Windows 8 has not been scheduled for release.

65. The importance of compatibility with Windows 7 cannot be overstated. In the Registration Statement itself, Windows 7's support of touch capabilities is touted as a main factor in the growth of the market.

66. The Defendants made further material misstatements in the Prospectus and Registration Statement when they touted the Company's well-established sales and distribution network:

> We have spent almost 20 years building our global network of approximately 365 direct dealers and distributors. [. . .] We believe that our strong global network of knowledgeable resellers is a critical competitive advantage as we seek to increase our revenue generated outside of the United States, the United Kingdom and Canada. We believe that this network will also help us to further address the business and government markets since many of our resellers already sell to business and government accounts.

Registration Statement at 2-3.

> We have sold our products and solutions in over 100 countries and believe that our well-established distribution network provides us with a broad global presence and access to a large addressable market.

Prospectus at 1.

67. These statements concerning the global distribution network were materially inaccurate and misleading. Unbeknownst to investors, Smart Tech did not have a broad global sales and distribution network outside of North America and Europe. This became clear in May 2011, when Smart Tech again released disappointing financial results that were below expectations. The Company and its executives stated that these poor financial results were due to additional expenses that the Company incurred to strengthen its global infrastructure.

68. The Company also failed to disclose increasing R&D expenses in the Registration Statement and Prospectus:

> We expect research and development expenses to continue to grow in absolute dollars as we focus on enhancing and expanding our product offerings, although we do not expect these expenses to change materially from prior years as a percentage of revenue."

Prospectus at 47.

69. This statement was materially inaccurate and misleading because Smart Tech's R&D costs did increase materially. The R&D expenses increased by $19.4 million, or 57.7%, from $33.6 million in fiscal 2010 to $53.0 million in fiscal 2011. In 2010, R&D as a percentage of revenue was 5.1%, while in 2011, R&D as a percentage of revenue rose to 6.7%.

70. In its Form 6-K filed with the SEC on July 22, 2011, the Company disclosed that its R&D expenses for fiscal year 2011 had increased by 57%:

> Our research and development expenses increased by $19.4 million, or 57.7%, from $33.6 million in fiscal 2010 to $53.0 million in fiscal 2011. These increases reflect our continued commitment to innovation and investment in product development for the education and business markets, including an increase in the number of software developers, engineers and technicians required to support this development, as well as the acquisition of NextWindow.

July 22, 2011 Form 6-K/A.

71. In general, the statements made in the Prospectus and Registration Statement were materially false and misleading when made because the Company failed to the disclose the following material facts concerning the acquisition of NextWindow, the lack of a global sales and distribution network and

increasing R&D expenses: (1) the Registration Statement (and the financial statements and related SEC filings incorporated therein by reference) concealed the fact that the NextWindow acquisition could not be fully integrated with the Company because its software was incompatable with Windows 7; (2) the Registration Statement and Prospectus failed to disclose the Patent Dispute existing between the Company and NextWindow, which was dismissed less than three months before the IPO; (3) the Registration Statement misstated that the Company's growth in its global sales and distribution networks was well-established; (4) the Registration Statement misstated that the R & D expenses would not materially change; and (5) as a result of the foregoing, the Company's Registration Statement was false and misleading at all relevant times.

PLAINTIFFS' CLASS ACTION ALLEGATIONS

72. Plaintiffs bring this action as a class action on behalf of a Class, consisting of all those who purchased Smart Tech's common stock pursuant or traceable to the Company's IPO and Registration Statement and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

73. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are thousands of members in the proposed Class. The proposed Class may be identified from records maintained by Smart Tech or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

74. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct.

75. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

76. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. whether the federal securities laws were violated by Defendants' acts as alleged herein;

b. whether the Prospectus and Registration Statement contained materially false and misleading statements and omissions; and

c. to what extent Plaintiffs and members of the Class have sustained damages and the proper measure of damages.

77. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FIRST CLAIM
Violations of Section 11 of
the Securities Act Against All Defendants

78. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

79. This Claim is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against each of the Defendants.

80. The Registration Statement was inaccurate and misleading, contained untrue statements of material facts, and omitted facts necessary to make the statements made therein not misleading and omitted to state material facts required to be stated therein.

81. Defendant Smart Tech is the issuer of the securities purchased by Plaintiffs and the Class. As such, Smart Tech is strictly liable for the materially inaccurate statements contained in the Registration Statement and the failure of the Registration Statement to be complete and accurate.

82. The Individual Defendants, Apax, and Intel each signed the Registration Statement. The Individual Defendants, Apax, and Intel each had a duty to make a reasonable and diligent investigation of

the truthfulness and accuracy of the statements contained in the Registration Statement. They had a duty to ensure that they were true and accurate, that there were no omissions of material facts that would make the Registration Statement misleading and that the document contained all facts required to be stated therein. In the exercise of reasonable care, the Individual Defendants, Apax, and Intel should have known of the material misstatements and omissions contained in the Registration Statement and also should have known of the omissions of material fact necessary to make the statements made therein not misleading. As such, the Individual Defendants, Apax and Intel are liable to Plaintiffs and the Class.

83. The Underwriter Defendants each served as underwriters in connection with the Offering. These defendants each had a duty to make a reasonable and diligent investigation of the truthfulness and accuracy of the statements contained in the Registration Statement. They had a duty to ensure that they were true and accurate, that there were no omissions of material facts that would make the Registration Statement misleading and that the documents contained all facts required to be stated therein. In the exercise of reasonable care, the Underwriter Defendants should have known of the material misstatements and omissions contained in the Registration Statement and also should have known of the omissions of material facts necessary to make the statements made therein not misleading. As such, the Underwriter Defendants are liable to Plaintiffs and the Class.

84. By reasons of the conduct herein alleged, each Defendant violated Section 11 of the Securities Act.

85. Plaintiffs acquired Smart Tech common stock in reliance on the Registration Statement and without knowledge of the untruths and/or omissions alleged herein. Plaintiffs sustained damages and the price of Smart Tech's shares declined substantially due to material misstatements in the Registration Statement.

86. This action was brought within one year after the discovery of the untrue statements and omissions and within three years of the date of the IPO.

87. By virtue of the foregoing, Plaintiffs and the other members of the Class are entitled to damages under Section 11 as measured by the provisions of Section 11(e), from the Defendants and each of them, jointly and severally.

SECOND CLAIM
Violations of Section 12(a)(2) of the Securities Act Against All Defendants

88. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

89. Defendants were sellers and offerors and/or solicitors of purchasers of the Smart Tech securities offered pursuant to the IPO. Defendants issued, caused to be issued, and signed the Registration Statement in connection with the Offering. The Registration Statement was used to induce investors, such as Plaintiffs and the other members of the Class, to purchase Smart Tech securities.

90. The Registration Statement contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted material facts required to be stated therein. Defendants' actions of solicitation included participating in the preparation of the false and misleading Registration Statement.

91. As set forth more specifically above, the Registration Statement contained untrue statements of material fact and omitted to state material facts necessary in order to make the statements, in light of circumstances in which they were made, not misleading.

92. Plaintiffs and the other Class members did not know, nor could they have known, of the untruths or omissions contained in the Registration Statement.

93. The Defendants were obligated to make a reasonable and diligent investigation of the statements contained in the Registration Statement to ensure that such statements were true and that there was no omission of material fact required to be stated in order to make the statements contained therein not misleading. None of the Defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were accurate and complete in all material respects. Had they done so, these Defendants could have known of the material misstatements and omissions alleged herein.

94. This claim was brought within one year after discovery of the untrue statements and omissions in the Registration Statement and within three years after Smart Tech securities were sold to the Class in connection with the Offerings.

THIRD CLAIM
For Violation of Section 15 of the Securities Act
Against the Individual Defendants, Apax, and Intel

95. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

96. Individual Defendants, Apax and Intel acted as controlling persons of Smart Tech within the meaning of §15 of the Securities Act. By reason of their ownership, senior management positions and/or directorships at the Company, as alleged above, these defendants, individually and acting pursuant to a common plan, had the power to influence and exercised the same to cause Smart Tech to engage in the conduct complained of herein. By reason of such conduct, the Individual Defendants, Apax and Intel are liable pursuant to §15 of the Securities Act.

97. By reason of such wrongful conduct, the Individual Defendants, Apax and Intel are liable pursuant to §15 of the Securities Act. As a direct and proximate result of the wrongful conduct, Class members suffered damages in connection with their purchases of the Company's securities.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Declaring this action to be a proper class action pursuant and certifying Plaintiffs as Class representatives;

B. Awarding Plaintiffs and other members of the Class compensatory damages;

C. Awarding Plaintiffs and other members of the Class rescission on their Section 12(a)(2) claims;

D. Awarding Plaintiffs and other members of the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees, and other costs and disbursements; and

E. Awarding Plaintiffs and other members of the Class any other relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

DATED: September 27, 2011

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